port of the ruling we refer to Spence *v.* N. & W. R. R. (supra) and to Pecos & N. T. R. Co. *v.* Meyer (Tex. Civ. App., 155 S. W. 309), the syllabus of which is as follows:

'Under the Carmack Amendment, which provides that any common carrier receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading and shall be liable to the "lawful" holder thereof for any loss or injury to such property caused by it or by any carrier to which such property may be delivered, or over whose line such property may pass, the term "lawful holder" comprehends the owner of the property transported, or the one beneficially entitled to recover for the loss or injury, and manual possession of the bill of lading is not a prerequisite to the right to sue, so that a shipper accompanying the shipment was not deprived of his right to sue because he surrendered his bills of lading at the destination in exchange for free transportation on the return' (Internat. Watch Co. *v.* D., L. & W. R. R., 80 N. J. Law, 553, 78 Atl., 49; Galveston R. Co. *v.* Wallace, 223 U. S. 481, 32 Sup. Ct., 205, 56 L. Ed. 523; A. C. L. R. Co. *v.* Riverside Mills, 219 U. S. 186, 31 Sup. Ct. 164, 55 L. Ed. 167, 31 L. R. A., N. S., 7; Storm Lake Tub, &c., Co. *v.* Minn., St. L., &c., R'y, D. C., 209 Fed. 900; Adams *v.* Chicago, Great Western R'y, D. C., 210 Fed. 364)."

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**Jurisdiction—Agreements to Oust Courts of Jurisdiction—Nashua River Paper Co. v. Hammermill Paper Co., 111 N. E. 678.**—The Supreme Judicial Court of Massachusetts held that a stipulation in a commercial contract between a corporation domiciled in Massachusetts and a corporation incorporated in Pennsylvania, that no action should be maintained against the latter corporation in any State or Federal court other than the courts of common pleas of Pennsylvania, was unenforcible, and did not preclude the maintenance of such an action in the courts of Massachusetts.

This decision is in accord with the weight of authority in American jurisdictions. In Meachem *v.* Jamestown, F. & C. R. R. (211 N. Y., 346), in it was held that the courts of New York will not enforce a provision in a contract executed and to be performed in another State requiring all differences and disputes arising under the contract to be settled by arbitration to the exclusion of the courts. The radical spirit in which the rule against recognition of contracts to oust the court of jurisdiction will be administered was indicated in the following language by Judge Cardozo at the opening of his opinion:

"An agreement that all differences arising under a contract shall be submitted to arbitration relates to the law of remedies, and the law that governs remedies is the law of the forum. In applying this rule regard must be had not so much to the form of the agree-

ment as to its substance. If an agreement that a foreign court shall have exclusive jurisdiction is to be condemned (Benson *v.* Eastern B. & L. Ass'n, 174 N. Y. 83; Nute *v.* Ins. Co., 6 Gray, 174, 180; Slocum *v.* West. Assur. Co., 42 Fed. Rep. 235; Gough *v.* Hamburg-Am. Co., 158 Fed. Rep. 174), it is not saved by a declaration that resort to the foreign court shall be deemed a condition precedent to the accrual of a cause of action. A rule would not long survive if it were subject to be avoided by so facile a device."

The decision in the principal case by the Supreme Judicial Court of Massachusetts is of special interest, first, because what is perhaps the leading adjudication in support of the general rule (Nute *v.* Hamilton Mutual Ins. Co., supra) was decided by that tribunal, the opinion being written by Chief Justice Shaw, and, second, because perhaps the most notable departures from and exceptions to the rule have been made by the same court in Daley *v.* People's Building Loan & Sav. Ass'n (178 Mass. 13), and especially in Mittenthal *v.* Mascagni (183 Mass. 19). The following extract from the opinion of Chief Justice Rugg in the principal case is worthy of quotation, because it circumscribes the authoritative significance of the divergencies of the Massachusetts court and keeps in line with the general trend of American authority:

"As the decision in the Daley case was expressly confined to its own peculiar circumstances, it can hardly be considered as substantially narrowing the authority of Nute *v.* Hamilton Mut. Ins. Co. (6 Gray, 174). In Mittenthal *v.* Mascagni (183 Mass. 19, 66 N. E. 425, 60 L. R. A. 812, 97 Am. St. Rep. 404), the parties were both non-residents. The action was on a contract made in Florence, Italy, where the defendant, a subject of the King of Italy, had his home and where the plaintiffs, citizens of New York, elected a domicile by a provision of the contract. It related to a concert tour through the various States of this country, and was partly to be performed in Florence, and contained the provision that the courts of Florence, Italy, should have exclusive jurisdiction of any difference between the parties, except that the defendant reserved a right of action in New York for a payment of his recompense due under the contract. It was held that under the circumstances of hurried travel through many different jurisdictions, it was reasonable that the parties should fix upon the jurisdiction of the domicile of the defendant as the one where disputes should be adjusted. As both the parties were non-residents, they had no standing in the courts of this State as matter of strict right, but only as matter of comity (Nat. Telephone Mfg. Co. *v.* Du Bois, 165 Mass. 117, 42 N. E. 510, 30 L. R. A. 628, 52 Am. St. Rep. 503). It therefore was regarded as appropriate to yield to the terms of a contract between the parties having such obvious foundation in convenience and reason, although the court well might have declined to exercise any jurisdiction of the case

on the ground that the parties were aliens (Nute *v.* Hamilton Mut. Ins. Co., 6 Gray, 174), was referred to in the opinion and not treated as overruled. In this connection Palmer *v.* Lavers (218 Mass. 286, 291, 105 N. E. 1000, 1002) may be referred to, where it was said that:

'Where one of two parties to a possible litigation, in order to obtain a release from what is equivalent to an attachment, agrees that the judgment of a court of first instance shall be final, that agreement does not come within that principle (that is, the principle of Nute *v.* Hamilton Mut. Ins. Co., 6 Gray 174), and that it is an agreement which is binding and will be enforced.'

That decision has no binding force upon the question now presented. Nor is the question here raised whether the parties may by contract provide that their respective rights growing out of the agreement shall be determined according to the law of a particular jurisdiction. (See Brandeis *v.* Atkins, 204 Mass. 471, 476, 90 N. E. 861, 26 L. R. A., N. S., 230; Pritchard *v.* Norton, 106 U. S. 124, 136, 1 Sup. Ct. 102, 27 L. Ed. 104; Greer *v.* Poole, 5 Q. B. D. 272, 274.)

The Daley and Mittenthal cases, as to the points adjudicated, while not extending the doctrine of the Nute case, do not overrule it and are not inconsistent with it. All three of these cases may be treated as stating the law applicable to the several States of facts presented to the court. The Nute case lays down the general principle. The other two cases stand as sound upon their several states of facts. To extend them to the present case involves overruling the Nute case. That case, as has been pointed out, states a general principle which has been adopted and prevails in all Federal courts by reason of the binding decisions of the United States Supreme Court in Home Ins. Co. *v.* Morse (20 Wall. 445, 22 L. Ed. 365) and Doyle *v.* Continental Ins. Co. (94 U. S. 535, 24 L. Ed. 148). The same rule prevails generally in all States where the question has arisen. It relates to a matter as to which uniformity of decision and harmony of law among the several jurisdictions of this country is desirable. It would be unfortunate if contracts touching a subject of general commercial interest, and which may be broadly operative as to jurisdiction, should be held valid in one State and invalid in all others. All these circumstances bring us to the conclusion that the clause in the contract here in question is unenforcible and that, therefore, the action can be maintained in the courts of this commonwealth."